IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 989 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANIBHAI KHODABHAI CHAUHAN - Appellant(s)

Versus

STATE OF GUJARAT - Opponent(s)

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Appearance :
MS RV ACHARYA for the Appellant.
MR HM PRACHCHHAK, APP, for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 02/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be tried by learned Additional Sessions Judge, Kheda, at Nadiad, in Sessions case No.94 of 1999, for the offence of murder of his wife-Sumanben, allegedly committed by him on 26th February, 1999, at about 15.00 hours, at his residence located in Khambhati Bhagol, Petlad, by causing fatal injuries to the deceased with an axe. The charge against him was framed at Exhibit 2, to which he pleaded not guilty and came to be tried. The prosecution led evidence and the Trial Court, after considering the evidence, came to a conclusion that the prosecution was successful in establishing the charge of murder against the appellant. The appellant, therefore, came to be convicted and was ordered to undergo imprisonment for life and to pay a fine of Rs.15,000/-, in default thereof, to undergo rigorous imprisonment for a further period two years, by judgment and order rendered on 31st August, 1999, which is under challenge in this appeal.

2. The facts of the case, in brief, are that the appellant and the deceased happened to be husband and wife, respectively, and were staying at the house located at Khmabhati Bhagol, in Petlad. They were staying with Chanchalben, mother of the appellant. On the day of the incident, around 15.00 hours, the appellant came home and asked the deceased to serve meals. The deceased is said to have taunted the appellant by saying that he was not doing any work to earn livelihood and it was not possible to serve him meals timely. The appellant got enraged on hearing that and picked up an axe which was lying in the house and inflicted multiple blows on the deceased over head, face, neck and chest, resulting into her death. At the time of the incident, as per the prosecution case, besides Chanchalben, mother of the appellant, one Chimanbhai Umedsinh Parmar, who happens to be nephew of the appellant,was also in the house, who had come to see Chanchalben. He was also a witness to the incient, besides Chanchalben. On raising shouts, neighbour Ismailbhai also came. The deceased succumbed to the injuries before she could be taken to the hospital. Chimanbhai went to police and lodged a First Information Report, on the basis of which, offence was registered and investigated. The

police filed charge sheet against the appellant in the Court of learned Judicial Magistrate, First Class, Petland, who, in turn, committed the case to the Court of Sessions and Sessions Case No.34 of 1999 came to be registered. The Trial Court, after the trial, recorded conviction, as stated above.

3. The record and proceedings are before us. Learned Advocate for the appellant and learned Additional Public Prosecutor, Mr. Prachchhak, have taken us through the record and proceedings.

4. Learned Advocate for the appellant submitted that the appellant was not in sound state of mind when the incident occurred. He had been suffering from mental ailment and, at the time of the incident, on being taunted by the deceased, he lost his control under an attack of insanity. He did not know what transpired thereafter. The entire incident occurred under an attack of insanity and, therefore, his case would fall under Section 84 of the Indian Penal Code. He submitted that the Trial Court has erred while appreciating the evidence in this perspective. Learned

advocate took us through the deposition of Chimanbhai Umedsinh, Chanchalben and Ismailbhai to bring home this point. He submitted that there is evidence to indicate that, in past, the appellant was suffering from mental disorder and was treated therefor. It has also come in evidence that he used to get provoked on slightest psychological stimulus, which happened in the instant case when he was taunted by the deceased. It was, therefore, submitted that the Trial Court has committed an error in coming to the conclusion that the case would not fall within the exception but would fall in a case of murder. The learned advocate, therefore, submitted that the case of the appellant may be considered in that perspective, the appeal may be allowed and the appellant may be acquitted of the charges.

5. Learned Additional Public Prosecutor, Mr. Prachchhak, has opposed this appeal. According to him, there is no evidence even to prima facie establish that the appellant was suffering from mental disorder at the time of occurrence. Bare words of the accused would not be sufficient. He has to lead some cogent and reliable evidence to establish this defence. It was also submitted by

learned Additional Public Prosecutor that P.W.3-Chanchalben and P.W.4-Ismail, who are mother and neighbour, respectively, of the appellant, have not supported the prosecution case, but P.W.2-Chimanbhai, nephew of the appellant has supported the prosecution case. He has no reason to falsely implicate the appellant. He submitted that, though it is alleged by the accused in his statement under Section 313 of the Code of Criminal Procedure that the relatives were not prepared to maintain him and, therefore, Chimanbhai has falsely implicated him, the appellant cannot be said to have discharged the onus of proving that he was suffering from mental imbalance at the time of occurrence and, in absence of such evidence and in failure on the part of the accused in establishing these aspects, the Trial Court cannot be said to have committed any error in appreciating the evidence. Learned Additional Public Prosecutor has relied on decision in the case of **Dharmendrasinh alias Mansing Ratansingh v. State of Gujarat, AIR 2002 SC 1937**, where the Apex Court took a view that, in absence of prescription of treatment given to the accused in the hospital, no conclusion can be drawn about mental illness of the accused at the time of the incident, even though there may be

statement of witnesses that the accused was suffering from mental illness or that he used to become mad and, therefore, the appeal may be dismissed.

6. Upon considering the evidence in the perspective of the points canvassed by rival sides, we find that the evidence of Dr. Rajeshkumar Shambhulal Thakkar (Exhibit 15) and the Postmortem Notes (Exhibit 17) go to show that the deceased had sustained, in all, six external injuries, one of which was in parietal region, another one was on left nape, the third one was on right side of face below eyelid, the fourth one was on right chest below clavicle, the fifth one was in the left upper chest over breast area and the 6th one was on right lower moracic back in form of a pair of wounds. These injuries were possible with muddamal axe and were sufficient in ordinary course of nature to cause death. Therefore, there is no hesitation in holding that the deceased met with a homicidal death. Learned advocate for the appellant has also not challenged this aspect.

7. On the question as to who caused the fatal injuries to

the deceased, the prosecution has examined P.W.3-Chanchalben, and P.W.4-Ismail. Both these witness have not supported the prosecution case and have been declared hostile. However, certain aspects emerge from depositions of these witnesses, on which both the sides have tried to place reliance. According to Chanchalben, she was not an eye-witness to the incident. She was sitting outside the house when the incident occurred. She, however, stated that the appellant was suffering from mental disorder and, as a result, she also had quarrels with the appellant on occasions. She also stated that the appellant had also disputes with P.W.2-Chiman Umedsinh. Ismailbhai has also not supported the prosecution case and has been declared hostile. However, during cross-examination to the Public Prosecutor, he admitted that he had stated in his police statement that he heard shouts of Chanchalben and Chiman and he, therefore, rushed to see that the deceased was lying on floor in an injured condition with multiple bleeding injuries on her person. He has admitted in cross-examination that he had inferred some quarrel between the accused and his wife from what had transpired between the appellant and the deceased. He denied the suggestion that Chimanbhai was not present when the incident

occurred.

7.1 It was suggested by learned Additional Public Prosecutor that the admissions made by Ismail in cross to the learned Public Prosecutor may be taken into consideration while appreciating the evidence. It is true that contradictions and omissions by this witness in examination-in-chief are proved by cross-examining him by the learned Public Prosecutor, where he is admitted to have stated certain aspects in his statement before police. However, on examination of the evidence, we are of the view that, even if the depositions of these two witnesses, namely, Chanchalben and Ismailbhai are ignored, there is sufficient material in the form of deposition of Chimanbhai (Exhibit 18) which throws sufficient light on the incident.

8. Chimanbhai is examined at Exhibit 18. He says that he stays at village Sekhadi of Petlad Taluka and, on the day of the incident, he had gone to the house of the appellant to inquire about health of Chanchalben. When he reached there, the appellant was present in the house and was quarrelling with the deceased. The

quarrel was about meals and the appellant then assaulted the deceased with an axe and caused injuries on head, chest, etc. The deceased succumbed to the injuries before she could be taken to the hospital and, therefore, he lodged the F.I.R. He identified the accused in the Court. The witness has been cross-examined at length, where he says that he reached the house of the accused at about 14.45 hours. He admits that the accused was engaged in agricultural labour and he used to keep agricultural implements at home. The disputes between the accused and the deceased lasted for about 15 minutes. He states that, he did not hear whether the deceased told the accused that he did not want to earn and how could he ask for food. He also did not remember whether it was stated in the F.I.R. that, on being questioned by the accused, the deceased told him that he did not want to earn and wanted to quarrel and, therefore, no meal would be served to him and as a result, the accused-appellant got enraged.

8.1 The witness has also admitted that, earlier, the appellant was suffering from mental disorder and had taken treatment from hospitals at Anand and Vadodara. He states that

earlier when the appellant used to get attack of such disorder, he used to get provoked even on slightest stimulus. He admits that, at the time of the incident also, the appellant was provoked. It is also admitted in cross-examination that at the time of the incident, the appellant was annoyed and there was a scuffle between the appellant and his wife, the deceased. He also admits that, after the incident, the appellant went to the police. The witness proves his F.I.R., which is produced on record at Exhibit 19.

9. The accused in his statement under Section 313 of the Code of Criminal Procedure has categorically denied involvement in the incident and has denied questions put to him. According to him, he knew nothing about the incident. It was only after some months, when he came to senses and when he was told by the police about the charge that he learnt about the incident. He has stated that he took treatment from psychiatrists in the year 1995.

10. Thus, it is clear that the transaction is established even from the solitary evidence of Chimanbhai Umedsinh (Exhibit 18) and that the appellant was involved in the incident and caused

multiple injuries on vital parts of the body of the deceased with an axe. The injuries , which were caused, were all serious in nature and were caused with force and were sufficient in ordinary course of nature to cause death. These aspects get formally established from deposition of Chimanbhai (Exhibit 18), who happens to be nephew of the appellant and will have no reason to falsely implicate the appellant-accused. We do not find any material to accept the allegation by the accused that because of his mental condition, family members were not prepared to accept him and to maintain him and, therefore, his nephew has deposed against him. Not only that there is no material to support this allegation, but also we find that Chimanbhai is staying at village Sekhadi, at a different place from the house of the appellant and there is no question of his maintaining the appellant. In fact, the appellant was staying with his mother and wife at the time of the incident. As such, Chimanbhai will have no reasons to falsely implicate the appellant.

11. What emerges from the evidence is that the appellant, during the trial, has mainly taken defence of insanity or

unsoundness of mind. But in support thereof, the appellant has not produced any evidence in support of this defence except a case paper from Dr. Rajesh Thakar, M.D. Psychiatry, indicating that some medicines were prescribed to Manibhai. Which Manibhai is not reflected in the case paper. But assuming for a moment that it is relating to the appellant, then also the last prescription was of May 1997, whereas the incident occurred on 26th February, 1999, i.e. after about two years, and, therefore, it is relevant and necessary for the appellant to show exact mental condition of the appellant at the time of the incident. In this respect, no medical evidence has come on record.

12. From the evidence of Chimanbhai Umedsinh and Chanchalben, what emerges is that the appellant had suffered psychological problems in past and was given treatment, but there is not an iota of evidence to show even in the form of suggestion that at the time of the incident, the appellant was under attack of mental ailment. It is, therefore, not possible to accept the defence that the appellant was suffering from mental ailment at the time of occurrence and that, therefore, he should be given benefit of

section 84 of I.P.C. In total absence of medical evidence in this regard and on considering the deposition of witnesses-Chimanlal and Chanchalben, it is not possible to accept the defence plea relating to Section 84 of I. P. C. In this regard, we may refer to the decision in the case of **Dharmendrasinh alias Mansing Ratansingh v. State of Gujarat, AIR 2002 SC 1937**, where the Apex Court observed thus :

> *"We find no infirmity in the finding of the High Court that in case it was so, the evidence should have been laid on behalf of the defence to prove the fact of mental illness. The prescription of the treatment given to the appellant in the hospital should have been brought in the record or the doctor who may have treated him could be produced to show that the appellant suffered from any mental illness. Obviously these facts, if at all would in special knowledge of the defence and in case the defence wanted to take advantage of any such ground of mental illness, this plea could have been substantiated by adducing relevant and cogent evidence."*

This Court is faced with a similar situation where barring a prescription in the name of Manibbai (without indicating full name

of the patient), which is of the year 1996 and 1997 and not of the day of the incident or of a time in proximity thereto, there is nothing on record to substantiate the say of the appellant. Section 84 of I. P. C., if seen, itself makes it clear that nothing is an offence which is done by a person, **who at the time of doing so**, by reason of unsoundness of mind, is incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law. Therefore, there has to be some evidence to show that the accused was suffering from unsoundness of mind at the time when he committed the act and that he was incapable of knowing the nature of the act or that what he is doing is wrong or contrary to law. The defence has not been able to show presence of any of these factors and, therefore, the defence of mental ailment could not have been accepted by the trial Court, as has rightly been done.

12.1 It would be appropriate to note that, though the accused, while giving statement under Section 313 of the Code of Criminal Procedure has produced case papers showing that he took treatment for psychiatric disorder from a Psychiatrist, the same has not been proved. The matter does not end there. The accused gave

an application before the Trial Court to examine Dr. Rajesh Thakar of Anand as a witness vide Exhibit 42. However, at a subsequent point of time, the said application with unconditionally withdrawn. In this set of circumstances, the accused-appellant cannot be said to have discharged his burden of showing that his case would fall under the exception contemplated under Section 84 of the I. P. C.

13. We have also examined the evidence from the angle of exception 1 and exception 4 of Section 300 of I. P. C., as was pleaded by the learned Advocate for the appellant at the fag end of his arguments. Here again, we do not find any such consistent defence being taken by the appellant. It has come in evidence that the appellant was formerly working as a Pump Operator and before that, he was doing agriculture. It has also come in evidence that he was not doing any specific work except that at one place it is stated that he is an agricultural labourer. The fact that the deceased taunted him is also not coming on record as a properly established fact and barring only a half-hearted suggestion to Chimanbhai, there is no material to infer that the appellant was given any provocation. Assuming for a moment that the deceased told him

that he was not doing any activity for earning, which may have provoked him, it cannot be considered as a grave and sudden provocation. It was merely a statement of fact.

14. As regards the plea that the case would fall under exception 4 of Section 300 of I. P. C., as the incident occurred without premeditation in a sudden quarrel and has been admitted by witness-Chimanbhai in his cross-examination that there was a scuffle between the two, it may be noted that there is no material which would go to show that there was a fight between the two. Apart from that, the appellant caused multiple injuries with axe on vital parts of the body and, therefore, it cannot be said that the appellant did not taken undue advantage and, therefore, exception 4 to Section 300 also would not be attracted.

15. We have examined the judgment and order impugned in this appeal. We have also examined the evidence as discussed above and we conclude that no error can be said to have been committed by the Trial Court while convicting the appellant for the offence of murder. We do not find any substance in the appeal.

The appeal must fail and is dismissed. The judgment and order of conviction and sentence of the Trial Court is hereby confirmed.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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